SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 440

THE UNITED STATES, PETITIONER

vs.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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1 In the Supreme Court of the United States

October term, 1928

No. ——

THE UNITED STATES, PETITIONER

v.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY

Petition for a writ of certiorari to the Court of Claims

The Solicitor General, on behalf of the United States of America, prays that a writ of certiorari issue to review the judgment of the Court of Claims entered in the above-entitled cause in favor of the respondent in the sum of $475.17 on June 18, 1928.

The question presented

The sole question involved is one of law, whether, under the provisions of the land-grant acts and the land-grant equalization agreement, the United States in making payment to land-grant railroads and other carriers which have agreed to equalize their charges with the rates paid to land-grant roads is entitled to land-grant deductions from commercial charges for the transportation of the
2 authorized number of (private) mounts of Army officers when such mounts are used in the military service of the United States and are transported at Government expense on change of station orders of such officers.

Statement

This was a suit to recover $560.80 which was deducted by the accounting officers of the United States from freight charges claimed by the respondent for the transportation of the authorized (private) mounts of Army officers changing station and of enlisted men accompanying said mounts as attendants.

The findings show that at various times within six years of the filing of the petition in the Court of Claims the United States, through the Quartermaster Department of the Army, shipped on Government bills of lading a number of authorized (private) mounts of Army officers ordered to change station, for which the respondent as final carrier claimed its charges computed at full tariff rates as required for the transportation of prjvate property.

The respondent is not a "land-grant" or "bond-aided railroad," but in order that respondent might compete with such railroads for the transportation of troops and property of the United States it became a party to the so-called "freight land-grant equalization

agreement" (Finding III), hereinafter mentioned, whereby it agreed to accept the same rates of pay for the transportation of property for which the United States is lawfully entitled to reduced rates over such land-grant or bond-aided railroads as such
3 land-grant or bond-aided roads are entitled to receive for such transportation.

Petitioner's accounting officers made settlements and paid for said services at tariff rates less lawful land-grant deduction required for the transportation of property of the United States in accordance with the provisions of the land-grant statutes and the land-grant equalization agreements.

The Court of Claims, without rendering an opinion, gave judgment in favor of the respondent in the sum of $475.17, which represents the amount deducted for land grant on account of the transportation of the mounts only, and in effect followed its former decisions holding that the United States was not entitled to such deductions from charges for the transportation of the authorized private mounts of Army officers on change of station.

The land-grant statutes

The three general provisions in the land-grant acts which state the conditions under which troops and "property" of the United States shall be transported over land-grant or bond-aided railroads are as follows:

The act of March 3, 1863, c. 98, sec. 3, 12 Stat. 772, 773, provides that—

"• • • said railroads and branches shall be and remain public highways for the use of the Government of the United States, free from all toll or other charge upon the transportation of *any property* or troops of the United States." (Italics ours.)

4 The act of July 25, 1866, c. 242, sec. 5, 14 Stat. 239, 241, provides that—

"• • • said railroad shall be and remain a public highway for the use of the Government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the Government of the United States."

The act of July 27, 1866, c. 278, sec. 11, 14 Stat. 292, 297, provides that—

"• • • said • • • railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation."

The so-called freight land-grant equalization agreement entered into by and between the Quartermaster Corps and the carriers, in-

cluding this respondent, which have received no grants of land or bonds to aid them in the construction of their railroads, is as follows:

"The carriers * * * agree * * * to accept for the transportation of property moved by the Quartermaster Corps, United States Army, and for which the United States Government is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available, as derived through deductions account of land-grant distance from a lawful rate filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement." (Appendix No. 9, Manual for the Quartermaster Corps, 1916, Vol. II, pp. 223, 226, superseded by Quartermaster General Circular No. 15, May 18, 1922.)

The several acts of Congress providing for the number of authorized mounts of Army officers, money allowance to officers owning their mounts, transportation and maintenance thereof, and for their purchase in lieu of transportation, are as follows:

"Authorized number of mounts

"* * * and forage in kind may be furnished to the officers of the Army by the Quartermaster's Department only for horses owned and actually kept by such officers in the performance of their official military duties when on duty with troops in the field or at such military posts west of the Mississippi River, as may be from time to time designated by the Secretary of War, and not otherwise as follows:

To the general, five horses;
To the lieutenant general, four horses;
To a major general, three horses;
To a brigadier general, three horses;
To a colonel, two horses;
To a lieutenant colonel, two horses;
To a major, two horses;
To a captain (mounted), two horses;
To a lieutenant (mounted), two horses;
To an adjutant, two horses;
To a regimental quartermaster, two horses.

"(Act of June 18, 1878, c. 263, sec. 8, 20 Stat. 143, 150; U. S. C. Title 10, sec. 801; AR 605-130, 3/15/22.)

"Transportation and maintenance of mounts

"* * * and for the authorized number of officers' horses, including bedding for the animals; and nothing in the act making appropriations for the legislative, executive, and judicial expense of the Government for the fiscal year nineteen hundred and eight, or any other act, shall hereafter be held or construed so as to deprive officers of the Army, wherever on duty in the military service of the United States, of forage, bedding, shoeing, or shelter for their authorized number of horses, or of any means of transportation or

maintenance therefor for which provision is made by the terms of this act * * *. (Act of March 2, 1907, c. 2511, 34 Stat. 1158, 1166; act of March 3, 1909, c. 252, 35 Stat. 742; U. S. C. Title 10, sec. 804.)

6 "* * * and hereafter transportation may be furnished for the owned horses of an officer, not exceeding the number authorized by law, from point of purchase to his station, when he would have been entitled to and did not have his authorized number of owned horses shipped upon his last change of station, and when the cost of shipment does not exceed that from his old to his new station. (Act of March 23, 1910, c. 115, 36 Stat. 243, 255; U. S. C. Title 10, sec. 808.)

"Mounts furnished officers below grade of major and money allowance to officers owning their mounts

"* * * that hereafter the United States shall furnish mounts and horse equipments for all officers of the Army below the grade of major required to be mounted, but in case any officer below the grade of major required to be mounted provides himself with suitable mounts at his own expense he shall receive an addition to his pay of one hundred and fifty dollars per annum if he provides one mount, and two hundred dollars per annum if he provides two mounts. (Act of May 11, 1908, c. 163, 35 Stat. 106, 108; U. S. C. Title 10, secs. 802 and 805.)

"Purchase of mounts in lieu of transportation

"* * * that hereafter when a mounted officer is ordered * * * to make a change of station in the United States in which the cost of transportation for his authorized number of owned horses exceeds the sum at the time allowed for that purpose in Army Regulations, the Secretary of War is authorized, under such regulations in respect to inspection and valuation as he may prescribe, in his discretion to permit the purchase of said horses by the Quartermaster's Department, at a price not exceeding the average contract price paid for horses during the preceding fiscal year, the exact price to be fixed by a board of officers. (Act of March 23, 1910, c. 115, 36 Stat. 243, 254; U. S. C. Title 10, sec. 811.)

7 Army regulations

The various provisions of Army regulations pertaining to the authorized number of private mounts of Army officers required to be mounted are as follows:

"Transportation of private mounts

"PAR. 1098. AR 1913, 1917. The Quartermaster Corps will transport for officers changing station * * * the number of horses for

which they are legally entitled to forage, and an attendant to accompany the horses when necessary, subject to the following restrictions:

"1. That the expense to the United States shall not exceed $100 for each horse transported.

* * * * * * *

"3. That the horses are owned by the officer and are intended to be used by him at his new station in the public service.

"PAR. 25. AR 30-965, 6/1/23. *When authorized.*—a. The authorized number of private mounts of officers designated as mounted officers (paragraphs 1 and 2, AR 605-130), together with an attendant, when necessary, will be transported at Government expense in the following cases, *provided the horses are owned by the officer, are intended to be used by him at his new station, and are suitable mounts*, viz:

"(1) Officers changing station, subject to the restrictions contained in paragraph 26.

"(2) Graduates of the United States Military Academy, who, upon first assignment to station, will be designated as mounted officers (paragraph 1, AR 605-130)." (Italics ours.)

"PAR. 27. AR 30-965, 6/1/23. *Certificate required.—a.* All private mounts turned over to a quartermaster for shipment must be accompanied by a certificate, signed by the owner—

"(1) Stating that the mounts are authorized mounts and *are intended for use in the public service at his new station.*" (Italics ours.)

8 "Maintenance of private mounts

"PAR. 1086. AR 1913, 1917. * * * Authorized private mounts of officers will similarly at Government expense be stabled, shod, foraged, and supplied with veterinary treatment and medicine * * *. (Par. 3, AR 605-130, 3/15/22.)

"Pay for use of private mounts furnished by officers below grade of major

"PAR. 1273. AR 1913, 1917. Officers below the grade of major, required to be mounted, whether permanently or temporarily, will be furnished with a proper mount by the Quartermaster Corps. Such officers may, however, provide themselves with suitable mounts at their own expense and of their exclusive ownership, and any officer of the grades indicated who so provides himself shall receive an addition to his pay of $150 per annum if he provides one mount and $200 per annum if he provides two mounts. (AR 35-1720, 1/6/26.)

"Standard fixed for private mounts

"PAR. 1272. AR 1913, 1917. The private mounts, owned and provided by officers of all grades in the Army, for which the Govern-

ment expends public funds in the matter of maintenance and care, shall be of a standard fixed by the Secretary of War from time to time. (Changes, AR No. 76, 7/31/18.)

"Purchase and sale of mounts

"PAR. 1095, AR 1913, 1917, as changed by Changes, AR 87, 4/3/19. * * * When a mounted officer purchases a horse under the provisions of this paragraph, he shall not be permitted to sell him, prior to the expiration of one year from the date of purchase from the Government, except to another officer at a price to be agreed upon between seller and buyer or back to the Government at a price to be determined in the manner indicated above; provided, that where an officer has requested authority to sell a horse back to the Government under the provisions of this paragraph and the board convened to examine the horse finds that he is more than 10 years of age or that he is no longer fit for an officer's mount nor for the military service by reason of unsoundness or defects, the officer shall then be free to dispose of the said horse as he may see fit. The limitation of this paragraph on the subsequent sale of a horse purchased from the Government shall apply, for the period of one year from the date of purchase from the Government, to any officer who may become the owner of such horse. (Par. 3, AR 605-140, 6/30/28.)

9 Assignments of error

In the view of the petitioner the Court of Claims erred as follows:

1. In giving judgment in favor of the respondent, and in effect concluding that the United States has no "property" right or interest in and to the authorized private mounts of Army officers used in the military service which entitles the Government to make and retain land grant deductions from commercial charges for transportation of such mounts at Government expense on change of station of the officer.

2. In concluding that the words "property of the United States" as used in the land-grant statutes and in the land-grant equlization agreement must be construed as relating to property the legal title and absolute ownership of which are actually lodged in the United States at the time it is transported at Government expense.

10 Reasons for granting the writ

1. The technical and limited construction placed upon the words "property of the United States" appears to be contrary to the intention of the Congress as expressed in the land-grant acts, and as thus construed by the Court of Claims the United States is unjustly deprived of its right to reduced rates over land-aided roads and other carriers which have agreed to equalize their rates with such land-grant roads, for the transportation of property not actu-

ally owned by the United States such as property leased or rented and used in the public service.

2. The administrative and accounting officers of the Government have uniformly held that the transportation of the authorized number of horses required for the official use of Army officers in the performance of their military duties, whether owned by the officers of the Government, is transportation of property for the official use of the Government and subject to the land-grant deductions authorized for the transportation of "property of the United States." (AR 30-965, 6/1/23; 26 Comp. Dec. 569; 3 Comp. Gen. Dec. 703.)

This question was first presented to the Court of Claims in the case of Illinois Central R. R. Co. v. United States, 52 C. Cls. 53, wherein the railroad sued to recover the land-grant deduc-
11 tions made upon transportation of authorized private mounts of officers when such officers were ordered to overseas duty and mounts were transported to their homes. The Court of Claims held that, since there was no authority to transport such mounts at public expense, the Government was not liable for any deductions made from such bills. The same effect is the decision by the Court of Claims in the case of A. T. & S. F. R. R. C. v. United States, 55 C. Cls. 339, citing the Illinois Central decision, and pointing out that, since the mounts are property of the officers and not the United States, there is no authority for the Government to pay for the transportation of the same at public expense, and therefore no recovery could be granted for these deductions. Notwithstanding these decisions the accounting officers of the Government continued to pay for such transportation at land-grant rates. The question was again raised in the case of Oregon-Washington Railroad and Navigation Co. v. United States, 58 C. Cls. 645, where it was held that, since the mounts were the property of the officers and not of the United States, the Government was not entitled to the benefit of land-grant rates. When in 1923 the question of taking an appeal in that case was presented to Solicitor General Beck, he decided against it saying; "Amount too small to justify expense, especially as point involved doubtful." The accounting officers still continue to settle similar claims at land-grant rates.

12 3. The words "property of the United States" as used in the land grant acts and the equalization agreement have never been construed by this court, and until that shall be done there will be a constant difference of opinion between the administrative and accounting officers and the railroads generally as to the "property" of the United States in the authorized number of private mounts of Army officers when such mounts are used in the military service and are transported at Government expense. The continuance of this controversy will result in a decided increase in the already large number of accumulated suspensions and partial settlement of similar claims of both land-grant and nonland-grant roads now pending in the General Accounting Office.

4. While the amount involved in this case is small, it is at once apparent that under present regulations and unforseen conditions which might arise in the future necessitating the transfer of large bodies of troops, with officers required to be mounted, the question is of large financial importance to both the Government and the railroads.

For the reasons stated it is respectfully submitted that a final determination of the question involved is of sufficient importance to warrant the granting of the writ of certiorari to review the judgment of the Court of Claims in this case.

13 Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.
HERMAN J. GALLOWAY,
Assistant Attorney General.
LOUIS R. MEHLINGER,
Attorney.

SEPTEMBER, 1928.

14 In Court of Claims of the United States

No. F-139

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, PLAINTIFF

VS.

THE UNITED STATES

(Land-grant roads—Transportation of private mounts of Army officers)

I. *Petition*

Filed April 28, 1926

The Honorable Court of Claims:

The Galveston, Harrisburg & San Antonio Railway Company, plaintiff, respectfully represents:

15 I

Plaintiff is a corporation duly organized under the laws of the State of Texas, and as such corporation now is, and was during all the times hereinafter mentioned, engaged as a common carrier in the transportation of passengers and freight in and through various States of the United States. Part of the lines of railroads operated by plaintiff were constructed with the aid of grants of land by the United States.

II

Under the acts of Congress granting lands in aid of railroads and acts of Congress regulating the expenditure of appropriations by the United States for Army transportation over such land-grant railroads, so far as same may be applicable, said land-grant railroads were required to transport troops and munitions of war and property of the United States at not exceeding fifty per centum of the rates paid by private parties for the same kind of service; but in none of said acts were said land-grant railroads required, nor have they ever agreed, to transport at such reduced rates any property other than property of the United States.

III

At and prior to the times when the services hereinafter mentioned were performed, the railroad companies of the United States generally, including claimant, had severally agreed with the Quartermaster General of the United States Army (subject to certain exceptions not necessary here to be stated) to accept, for the transportation of property moved by the Quartermaster's Department, United
16 States Army, and for which the United States Government was lawfully entitled to reduced rates over land-grant roads (i. e., property of the United States), the lowest net rates lawfully available as derived through deductions account of land-grant distance from a lawful rate filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement. Said agreements and a list of carriers participating are set forth in Appendix No. 9 to Manual for the U. S. Quartermaster Corps, 1916, Vol. II, pp. 223, 229–230, which was superseded by Quartermaster General Circular No. 15, May 18, 1922.

IV

At various times within six years of the filing of this petition (with one exception hereinafter noted) the United States, through the Quartermaster's Department of the Army shipped as freight over certain railroads, a number of horses, being the authorized private mounts of Army officers changing station, said shipments being in each instance upon the Government form of bill of lading prescribed by the Comptroller of the Treasury (14 Comp. Dec. 967, et seq.), prepared and furnished by the Quartermaster's Department of the Army, and calling for tariff rates, and stipulating for payment to last carrier upon presentation of the accomplished bill of lading.

For the aforesaid transportation plaintiff, as last carrier, rendered its bills to the defendant on the prescribed form of Government voucher, at what it believed to be the full rates authorized by the applicable tariffs on file with the Interstate Commerce Commission, submitting with its said bills the duly accomplished bills of

17 lading covering said shipments, but in settling its said bills the accounting and disbursing officers of the Government wrongfully and erroneously disallowed and deducted certain amounts on account of land-grant distance, under the presumed authority of the aforesaid railroad land-grant laws and equalization agreements, and paid plaintiff only the reduced amounts for said transportation provided for the transportation of property of the United States, although said horses were the personal property of said officers of the Army. And plaintiff says it accepted payment for said transportation in such reduced amounts under protest.

Annexed hereto and made a part hereof is a statement, marked "Exhibit A to the petition," showing in detail the transactions above referred to, the amounts due plaintiff therefor at full tariff rates, the amounts paid plaintiff therefor, and the balances due plaintiff, aggregating $588.52.

The shipment covered by Government bill of lading No. 118 (included in Exhibit A to this petition) was made in 1917, but plaintiff's bill therefor (Q. 3720-10) was paid as rendered and the deduction complained of was made from another bill of plaintiff's for other transportation in Settlement T-79864-W, April 13, 1925.

In some instances the amounts stated in said Exhibit A to the petition are less than the amounts originally billed by plaintiff on account of its said bills having been based on combinations via routes which would not allow the Government the lowest through rates.

V

Wherefore, plaintiff says there is now justly due and owing it by the United States the sum of $588.52, exclusive of all just
18 credits and set-offs, for which amount it prays judgment, no assignment or transfer of the aforesaid claims or any interest therein having been made.

Plaintiff has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against that Government, and believes the facts stated in this petition to be true.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY,
Plaintiff.

By CHARLES H. BATES,
Its Attorney in Fact.

HARR & BATES,
Attorneys for Plaintiff.

[*Duly sworn to by Charles H. Bates; jurat omitted in printing.*]
(Power of attorney filed in No. A-227.)

19 *Exhibit A to petition*

Amounts due Galveston, Harrisburg and San Antonio Railway Co. account transportation of private amounts of Army officers for War Department

Company Bill No.	Bill of lading No.	Bill of lading Date	Amount paid	Balance due
Q-9966-11	1140969	11/10/21	$152.37	$32.13
War F. D. check 163644, 2/1/23, vou. 90-94. Tariff Counties I. C. C. No. 1087, Fonda's I. C. C. No. 100.				
Q-1542-2	1232972	1/1/24	150.01	43.19
War warrant 1926, check 63914, 9/25/24. Sett. T-75873-W, 9/16/24. Tariff Counties I. C. C. No. 1140.				
Q-2081-10-A	1384681	10/22/24	147.91	29.79
War warrant 26705, check 88808, 4/30/25. Sett. 79234-W, 5/25/25. Tariff Counties I. C. C. No. 1140.				
Q-9420-3-A	1058609	3/2/21	106.35	52.33
Check 172367, 3/17/23, vou. 3786-87 Carl Halla F. O. Tariff G. W. Love I. C. C. No. 4442.				
Q-2081-10-B	1387714	10/21/24	138.41	19.59
War warrant 26857, check 88943, 5/6/25. Sett. T-76324-W, 5/1/25. Tariff Lelands I. C. C. No. 1551.				
Q-2431-4	1166207	4/3/25	108.26	12.10
War warrant 1546, check 91314, 9/9/25. Sett. T-80758-W, 4/31/25. Tariff Lelands I. C. C. No. 1551.				
Q-2082-10	1232391	9/9/24	278.93	21.07
War warrant 321, check 90340, 7/27/25. Sett. T-80152-W, 7/17/25. Tariff Counties I. C. C. No. 1135.				
Q-2082-10	591350	10/24/24	171.10	18.20
War warrant 321, check 90340, 7/27/25. Sett. T-80152-W, 7/17/25. Tariff Counties I. C. C. No. 1140.				
Q-1476-1	1191768	9/6/23	119.36	5.64
War warrant 1805, check 65821, 9/16/24. Sett. T-75785-W, 9/11/24. Tariff Lelands I. C. C. No. 1551.				
20 Q-436-8	1100469	6/21/22	79.48	11.75
Check 222312, 5/26/23, vou. 3699. Carl Halla F. O. Tariff Lelands I. C. C. No. 1501.				
Q-514-9	1024978	6/30/22	360.34	19.97
(Deducted from bill Q-1895-8) War warrant 26469, check 88824, 4/23/25. Sett. T-79146-W, 4/17/25. Tariff Cottrells I. C. C. No. A-55, Lelands I. C. C. No. 1481.				
Q-1586-3	1293347	3/1/24	194.22	16.89
War warrant 3558, check 67100, 11/24/24. Sett. T-76088-W, 11/19/24. Tariff Curletts I. C. C. No. A-79, Lelands I. C. C. No. 1579.				
Q-1721-5	1293372	4/16/24	154.07	18.49
War warrant 3035, check 66710, 11/6/24. Sett. T-76441-W, 11/1/24. Tariff Curletts I. C. C. No. A-79, Leland's I. C. C. No. 1551.				

Company Bill No.	Bill of lading No.	Date	Amount paid	Balance due
Q-1891-8	1335214	8/5/24	$259.17	$21.24
War warrant 27150, check 89156. Sett. T-79411-W, 5/9/25. Tariff Curletts I. C. C. No. A-79, Lelands I. C. C. No. 1579.				
Q-3729-10	118	9/15/17	232.76	31.19
(Deducted from bill Q-1728-5) War warrant 26343, check 88537. Sett. T-79064-W, 4/13/25. Tariff used same commercial rates as G. A. O. did without I. G. Rs.				
Q-2074-10	1383325	9/4/24	248.69	39.42
War warrant 2123, check 91652, 10/14/25. Sett. T-80034-W, 9/21/25. Tariff Curletts I. C. C. No. A-79, Lelands I. C. C. No. 1579.				
Q-9921-10	999453	9/21/21	146.28	10.07
War warrant 17379, check 37697, 2/5/23. Sett. TN-W-6070, 1/20/23. Tariff Lelands I. C. C. No. 1501.				
Q-8468-6-B	916958	5/20/20	156.95	24.59
Check 24887, 4/6/21, vou. 1383. E. D. Hopkins F. O. Tariff, Curletts I. C. C. No. 239, Lelands I. C. C. No. 1357.				
Q-1656-4-A	1221554	1/15/24	124.95	26.10
(Deduction made from bill Q-2079-10-A) War warrant 27520, check 89419, 5/28/25. Sett. T-79014-W, 5/25/25. Tariff Mallory I. C. C. No. 125-I., Fendas I. C. C. No. 148.				
21 Q-1911-8-B	804148	7/19/24	254.28	3.72
War warrant 25133, check 87093, 3/23/25. Sett. T-78400-W, 3/16/25. Tariff Lelands I. C. C. No. 1551.				
Q-2317-2	1286549	1/26/25	284.86	7.14
War warrant 28440, check 94686, 6/30/25. Sett. T-80048-W, 6/26/25. Tariff Lelands I. C. C. No. 1703.				
Q-2317-2	1405293	1/23/25	151.91	35.58
War warrant 28440, check 94686, 6/30/25. Sett. T-80048-W, 6/26/25. Tariff Wilsons I. C. C. No. A-143, Lelands I. C. C. No. 1551.				
Q-1337-11-A	1244734	7/7/23	119.93	21.72
Paid $120.40, war warrant 24815, check 87400, 3/17/25. Sett. T-78284-W, 3/6/25. Paid .53, war warrant 48, check 90187, 7/3/25. Sett. T-80109-W, 6/30/25. 68 cents additional authorized by reconsideration of review A-6615, 11/9/25 not paid. Tariff Curletts I. C. C. No. A-79, Lelands I. C. C. No. 1579 and Items 6, etc., page 257, Consolidated Classes. 3.				
Q-1899-8	483559	7/12/24	195.69	17.80
War warrant 27030, check 89069, 5/14/25. Sett. T-79399-W, 5/7/25. Tariff Curletts I. C. C. No. A-79, Lelands I. C. C. No. 1579.				
Q-1069-7-A	114925	6/26/23	244.80	17.22
War warrant 25164, check 87026, 3/25/25. Sett. T-78509-W, 3/17/25. Tariff Glenns I. C. C. No. 397, Glenns I. C. C. No. A-313, Lelands I. C. C. No. 1710.				

Company Bill No.	Bill of lading No.	Bill of lading Date	Amount paid	Balance due
Q-614-11	1029586	6/30/22	$157.59	$31.59

(Deducted from bill Q-1915-8)
War warrant 27387, check 88312, 5/26/25. Sett. T-70541-W, 5/20/25. Tariff used same commerce rates as G. A. O.

Total balance due $588.52

22 *II. General traverse*

Filed June 26, 1926

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

HERMAN J. GALLOWAY,
Assistant Attorney General.

L. M. R.

III. Argument and submission

On May 31, 1928, this case was argued and submitted on merits by Mr. William R. Harr, for the plaintiff, and by Mr. L. R. Mehlinger, for the defendant.

23 *IV. Special findings of fact and conclusion of law*

Filed June 18, 1928

This case having been heard by the Court of Claims upon a stipulation of facts signed on behalf of plaintiff by its attorneys, Harr & Bates, and on behalf of defendant by Assistant Attorney General Herman J. Galloway, the court makes the following

Special findings of fact

I

Plaintiff is a corporation duly organized under the laws of the State of Texas, and as such corporation now is, and was during all the times hereinafter mentioned, engaged as a common carrier in the transportation of passengers and property in and through various States of the United States.

II

Under the acts of Congress granting lands in aid of rail-
24 roads and acts of Congress regulating the expenditure of appropriations by the United States for Army transportation over such land-grant railroads, so far as same may be applicable, said land-grant railroads are required to transport troops and prop-

erty of the United States at not exceeding fifty per centum of the rates paid by private parties for the same kind of service.

III

At and prior to the times when the services hereinafter mentioned were performed, the railroad companies of the United States generally, including plaintiff, had severally agreed with the Quartermaster General of the United States Army to accept, for the transportation of property moved by the Quartermaster's Department, United States Army, and for which the United States Government was lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available as derived through deductions account of land-grant distance from a lawful rate filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement. Said agreements and a list of carriers participating are set forth in Appendix No. 9 to Manual for
25 the U. S. Quartermaster Corps, 1916, Vol. II, pp. 223, 228-230, which was superseded by Quartermaster General Circular No. 15, May 18, 1922.

IV

At various times within six years of the filing of the petition in this cause (with one exception hereinafter noted) the United States, through the Quartermaster's Department of the Army, shipped on Government bills of lading a number of horses which were the authorized private mounts of Army officers changing station.

For the aforesaid transportation plaintiff, as last carrier, rendered its bills to the defendant on the prescribed form of Government voucher at full commercial rates authorized by tariffs on file with the Interstate Commerce Commission and submitted with its said bills the duly accomplished bills of lading covering said shipments.

In some instances the bills were paid by disbursing officers of the Army in the amounts claimed by the plaintiff. Subsequently defendant's accounting officers, when passing upon the disbursing officers' paid accounts, disallowed and deducted from bills due the plaintiff for other transportation services certain amounts on
26 account of land-grant and paid plaintiff only the reduced amounts required to be paid for the transportation of property of the United States. In other instances the bills were paid upon direct settlements of the accounting officers on the basis of land-grant rates as for property of the United States.

The shipment covered by Government bill of lading No. 118 (included in Exhibit A to the petition) was made in 1917, but plaintiff's bill therefor (Q. 3720-10) was paid as rendered and the deduction complained of was made from another bill of plaintiff's for other transportation in settlement T-79064-W, April 13, 1923.

V

The appropriations from which payment was made for the transportation of the authorized private mounts of Army officers changing station are contained in the annual Army appropriation acts under the subhead "Transportation of the Army and its supplies," and the payments made to plaintiff in the present case were from said appropriations.

VI

The amounts disallowed or required to be deducted by disbursing officers of the Army, or disallowed by the accounting officers of the United States, on account of land grant from the published tariff rates, in the settlement of plaintiff's said bills for transportation of authorized private mounts of Army officers on authorized change of station orders and enlisted men accompanying them as attendants aggregate $560.80. Of this amount there was deducted the sum of $475.17 on account of land grant for the transportation of said mounts and $85.63 on account of land grant for the transportation of said enlisted men.

VII

Plaintiff protested against such land-grant disallowances and deductions being made or required, except as to the disallowance of the two items of $7.14 and $35.58 on bill Q. 2317-2, as to which no formal protest was filed owing to the fact that the plaintiff's letter to its Washington attorney directing him to file such a protest never reached him.

VIII

It has been the uniform practice of the administrative and accounting officers of the United States following certain decisions of the former comptrollers of the Treasury and of the Comptroller General of the United States to pay the carriers from public funds the commercial rates, less the appropriate land-grant deductions required to be made from charges for the transportation of the authorized private mounts of Army officers when such mounts were shipped on change of station orders of such officers. The correctness of this practice has been disputed by the plaintiff and its connecting carriers, and payments on such basis have been accepted by them under protest.

Conclusion of law

Upon the foregoing special findings of fact, which are made part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to recover $475.17.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of four hundred seventy-five dollars and seventeen cents ($475.17).

29 V. *Judgment*

At a Court of Claims held in the city of Washington on the 18th day of June, A. D. 1928, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is entitled to recover.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of four hundred seventy-five dollars and seventeen cents ($475.17).

30 [Clerk's certificate to foregoing transcript omitted in printing.]

(Indorsement on cover:) File No. 33,749 Court of Claims. Term No. 440. The United States, petitioner, vs. The Galveston, Harrisburg & San Antonio Railway Company. Petition for writ of certiorari and exhibit thereto. Filed September 14th, 1928. File No. 33,749.

Supreme Court of the United States

Order allowing certiorari

Filed October 29, 1928

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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